

Decision No. 170

Juliet Nkojo (No. 2),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on October 11, 1996, by Juliet Nkojo against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of E. Lauterpacht (President of the Tribunal) as President, F. Orrego Vicuña (a Vice President of the Tribunal), A.K. Abul-Magd and Bola A. Ajibola, Judges. The usual exchange of pleadings took place. The case was listed on May 16, 1997.

THE RELEVANT FACTS

2. The Applicant, who joined the Bank on July 16, 1979, applied to this Tribunal on August 21, 1995 for relief in respect of the termination of her appointment for unsatisfactory performance. She alleged that the Respondent had failed to observe her terms of employment and disputed the validity of the decision that resulted in her termination. She alleged that, *inter alia*:

- (a) she had been singled out for probation and for placing her on a closely monitored program;
- (b) she had been removed from her Division on the basis of alleged less than satisfactory performance;
- (c) she had not been offered a mutually agreed separation but had instead been invited to resign from the service of the Respondent.

3. The Tribunal, after considering the case on the merits with all the available evidence and facts, decided unanimously to dismiss the application in its Decision No. 150 of May 14, 1996. The Tribunal held that the Applicant's allegations concerning violation of due process and unfair treatment were unfounded. The Tribunal concluded:

The Applicant alleges that the Respondent's handling of her case was vitiated by certain violations of due process. She maintains that there has been a "history of secretiveness and deception" in her case and that parts of the process were kept hidden from her. The record provides no support for these allegations. The negative remarks concerning the Applicant's performance were communicated to her throughout the PPRs which, in turn, made reference to other documents pertaining to her supervisors' assessment of her performance. Throughout this process she was made aware of what was going on and had adequate opportunity to comment.

4. The Applicant now requests review of the Tribunal's Decision No.150 based on Article XIII(1) of the Statute. This states:

A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

The Applicant submits that a fact has been newly discovered which “might have had a decisive influence on the judgment of the Tribunal.” She claims further that this fact was unknown to her and to the Tribunal at the time the judgment was delivered on May 14, 1996.

5. The newly discovered fact, as alleged by the Applicant, is contained in a memorandum dated December 23, 1992 (hereinafter referred to as “the 1992 memorandum”), which is described by the Respondent as “merely a form memorandum sent to each support level staff.” The Applicant disagrees with this view and refers to it as a document that “conveyed formal and official reassignment instructions from the Director of Personnel Department to all support staff.” The 1992 memorandum was addressed to the Applicant by the Director, Personnel Management Department, and was entitled “OSP/TD/DEC Reorganization - Stage 3 Assignments of Support Level Staff.” It indicated that Stage 3 placements of Support Level Staff had been completed and informed the Applicant of her assignment from January 1, 1993 to the new Asia Technical Department (AST) Human Resources Development Division (ASTHR). It referred to an attempt by the Management “to maintain the continuity of work programs” wherever possible while taking the preferences of the Applicant and that of the management into consideration. It explained further that in some cases, Divisional assignments had not yet been made and urged the Applicant to contact her Manager or Personnel Team in case of any questions about her new assignment. It concluded that, where applicable, a Personnel Action Form reflecting the Applicant’s new organizational location would be issued shortly. The 1992 memorandum, the Applicant claims, “unconditionally reassigned” her from the AST Industry, Trade and Finance Division (ASTIF) to the new ASTHR with effect from January 1, 1993.

6. The Applicant claims that she never received the 1992 memorandum “until on or about May 5, 1996.” She further alleges that the 1992 memorandum came together with other documents which were sent to her home address by the Bank after she left the Bank’s employment.

7. The Applicant refers to the reorganization program of late 1992 within AST, in which the staff were assured that no one would lose his or her job as a result of the reorganization. They were given the opportunity to express their reassignment preferences, which the Applicant did. She expressed the desire to be reassigned away from her Manager of ASTIF. When the reassignment process was completed, she explains, the Manager, ASTIF, called a meeting of the Division and informed the Applicant that she was assigned to ASTHR with effect from January 1, 1993. In the Applicant’s reply she stated that the Manager, ASTIF, officially told her (in December 1992) that she was reassigned to ASTHR effective January 1, 1993.

8. On January 4, 1993, the Applicant reported for duty at her new Division -- ASTHR. However, she was informed about three weeks later that her reassignment would only be for three months, after which she would return to her former Manager whom she considered to be unfriendly and hostile to her at AST/Public/Private Sector and Technology Development Division (ASTTP) (a new Division which replaced ASTIF after the reorganization). Upon the enquiries made as to why she should return to her former Division where she was unhappy, she was informed by her Personnel Officer that she had “not been formally reassigned during the reorganization process.” The Applicant, therefore, argues that because she had neither received nor seen the 1992 memorandum she was “not in a position to challenge or question the [Personnel Officer’s] assertion” that she had not been formally reassigned to ASTHR.

9. The Applicant returned to ASTTP after three months. She complains of ill-treatment and harassment there. She claims that she was deprived of the ordinary rights in an office. She concludes that the discovery of the 1992 memorandum proves “beyond doubt” her submission that there was “conspiracy and machination” against her. She argues that the 1992 memorandum formally and unconditionally reassigned her but that the document was kept away from her; that both she and the Tribunal were deceived into believing that she had “not been reassigned in the OSP/TD/DEC reorganization process of late December 1992”; and that she was “in a malicious and deceitful manner” forced back to ASTTP where she did not wish to work and where she alleges she had always experienced hostile treatment.

THE APPLICANT’S MAIN CONTENTIONS

10. The Applicant's main argument is that the decision of the Tribunal would have been different if the 1992 memorandum had been available at the time of the judgment. The Tribunal should, therefore, act on the basis of Article XIII of the Statute because the 1992 memorandum is one which would have had a decisive influence on the judgment of the Tribunal. The document was kept away from her until it was too late and she learned of it only on or about May 5, 1996.

11. The Applicant also argues that her appointment with the Bank was wrongfully terminated "on the basis of bias and discrimination."

12. The Applicant, therefore, seeks effectively the same substantive relief as sought in her original application.

THE RESPONDENT'S MAIN CONTENTIONS

13. The Respondent contends that the application fails to meet the mandatory requirements of Article XIII of the Statute of the Tribunal. The 1992 memorandum presents no new facts sufficiently decisive to justify a revision of the earlier judgment in this case, nor has the Applicant proffered a fact that was previously unknown to the Tribunal and the Applicant. The Applicant was in possession of the 1992 memorandum long before the judgment of the Tribunal was delivered on May 14, 1996. The fact alleged by the Applicant is incorrect and irrelevant to her termination. The latter was not based on the content of the 1992 memorandum but on her failure to perform satisfactorily during the period that her work was monitored. The application should be barred under Article XI of the Statute of the Tribunal and under the doctrine of *res judicata*.

14. The Respondent argues further that in its original decision the Tribunal found that the placing of the Applicant on a monitored work program was necessitated by the need to evaluate her performance by the management review group. This was composed of "five unprejudiced members" and ultimately concluded that her performance was below required expectations and was unsatisfactory. The Tribunal upheld the decision of the Respondent to terminate the employment of the Applicant because she failed to "improve her performance during the monitored work period." The Tribunal was fully aware (from the pleadings) of the poor performance of the Applicant during the monitored work program both during the time she was in ASTHR and when she was in ASTIF and elsewhere. Whether the Applicant was temporarily or permanently assigned to ASTHR, the Tribunal's decision would not in any way have been affected.

15. The Respondent maintains that the 1992 memorandum is irrelevant and immaterial because it does not touch upon the performance of the Applicant. In any event, it does not even prove that the Applicant was permanently assigned to ASTHR from January 1, 1993. On the contrary, there are clear indications in the Respondent's Answer in the earlier Appeal to the Appeals Committee that the Applicant's assignment to ASTHR was merely temporary. The 1992 memorandum did not create reassignments or supersede the arrangements put in place between the Applicant and her Manager concerning her monitored work program.

16. The Respondent also maintains that while the 1992 memorandum may have been forgotten by the Applicant, it cannot be said to have been unknown to her for the purposes of Article XIII of the Statute of the Tribunal. The Applicant provides no evidence to support her claim that the Respondent deliberately withheld this memorandum from her. The Applicant was aware of the duration of her assignment in ASTHR because she was so informed by the Administrative Secretary of ASTHR in a memorandum dated January 22, 1993.

CONSIDERATIONS

17. The Applicant, whose original application against the Respondent was dismissed by this Tribunal in a judgment delivered on May 14, 1996 (*Nkojo*, Decision No. 150 [1996]) now files this new application requesting the Tribunal to revise that decision in accordance with Article XIII of the Statute of the Tribunal. The Tribunal has ruled in *Skandera* Decision No. 9 [1982], para. 7, that:

the powers of revision of a judgment are strictly limited and may be exercised only upon compliance with the conditions set forth in Article XIII.

In order to decide whether this is a proper case for the revision of its judgment, the Tribunal must, therefore, satisfy itself that certain conditions are met by the Applicant:

- (1) the request for revision must be made within six months after the newly discovered fact came to the knowledge of the Applicant;
- (2) a fact must have been newly discovered;
- (3) such a newly discovered fact was unknown to the Tribunal and the party requesting the review at the time the judgment was delivered; and
- (4) such a newly discovered fact might have had a decisive influence on the judgment of the Tribunal.

18. The basic question is whether the content of the 1992 memorandum is “a fact” that was known to the Applicant before the original judgment was delivered.

19. It is clear that at the time of the original application the Applicant knew virtually all the content of the 1992 memorandum and particularly those aspects of it which she complained of. The Applicant knew:

- (1) that she was assigned to ASTHR from her former Division, ASTIF;
- (2) that she was to resume duty at ASTHR on January 1, 1993 and she in fact resumed duty there on January 4, 1993;
- (3) of the particulars of her assignment in that Division.

20. More than once in her pleadings she states that the Manager of ASTIF officially told her in December 1992 that she was assigned to ASTHR from January 1, 1993. Relying on that information, the Applicant resumed duty there on January 4, 1993. The Applicant also admits that a special ASTIF Division meeting was held in December 1992 at which time her Manager informed the members of the staff, including herself, of their reassignments. She went on to aver that what she was told at the meeting was exactly what was contained in the 1992 memorandum. There is also the undisputed evidence of a memorandum to the Applicant dated January 22, 1993 from the Administrative Secretary which mentioned her reassignment. The Applicant also confirms that she discussed reassignment matters with her Personnel Officer.

21. In summary, although the Applicant denies knowledge of this “fact” on or about December 23, 1992 (the date of the 1992 memorandum), she cannot deny such knowledge on January 22, 1993 when she received a memorandum from the Administrative Secretary to this effect.

22. There is no doubt, therefore, that the content of the 1992 memorandum was known to the Applicant at the time of her original application and at the time that the judgment was delivered in the original case.

23. This conclusion is sufficient to dispose of the present application and the Tribunal does not need, therefore, to consider the other conditions referred to in Article XIII of its Statute.

DECISION

For the above reasons, the Tribunal unanimously decides to dismiss the application.

Elihu Lauterpacht

/S/ Elihu Lauterpacht
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At London, England, June 10, 1997